

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - November 14, 2006

STEPHEN G. CRANE, J.P.
DAVID S. RITTER
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-11550

DECISION & ORDER

North Fork Bank Corp., respondent, v Graphic
Forms Associates, Inc., et al., defendants,
Peter Battaglino, appellant.

(Index No. 13457/03)

Salamon, Gruber, Newman, Blaymore & Strenger, P.C., Roslyn Heights, N.Y.
(Sanford Strenger of counsel), for appellant.

Smith, Carroad, Levy & Finkel, LLP, Commack, N.Y. (Timothy Wan of counsel), for
respondent.

In an action to recover damages for breach of contract, the defendant Peter Battaglino
appeals from so much of an order of the Supreme Court, Suffolk County (Pitts, J.), dated July 20,
2005, as, upon reargument, adhered to a prior determination in an order dated March 17, 2005,
granting the plaintiff's motion for summary judgment against him.

ORDERED that the order is affirmed insofar as appealed from, with costs.

Contrary to the contention of the defendant Peter Battaglino, the plaintiff made a
prima facie showing of its entitlement to judgment as a matter of law by submitting proof of an
underlying credit agreement, a personal guaranty bearing Battaglino's signature, and the defendants'
failure to make payment in accordance with the terms of the credit agreement and guaranty (*see*
JPMorgan Chase Bank v Gamut-Mitchell, Inc., 27 AD3d 622, 622-623; *Fleet Nat. Bank v Marrazzo*,
23 AD3d 337, 338; *Royal Commercial Corp. v Kotrulya*, 304 AD2d 742, 743; *Constructamax v CBA*
Assoc., 294 AD2d 460). In response, Battaglino's conclusory denials that, although he signed the

credit agreement, he did not sign a personal guaranty or intend to personally guarantee the obligations of the defendant Graphic Forms Associates, Inc., were insufficient to raise a triable issue of fact in opposition to the motion (*see JPMorgan Chase Bank v Gamut-Mitchell, Inc.*, *supra* at 623; *Peyton v State of Newburgh*, 14 AD3d 51, 54; *Federal Deposit Ins. Corp. v 7 A.M. to 11 P.M. Delicatessen*, 251 AD2d 620; *Vamattam v Thomas*, 205 AD2d 615). Accordingly, upon reargument, the Supreme Court properly adhered to its prior determination granting the plaintiff's motion for summary judgment against Battaglino.

Battaglino's remaining contentions are without merit.

CRANE, J.P., RITTER, LUNN and COVELLO, JJ., concur.

ENTER:

A handwritten signature in cursive script, reading "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court